

## REMARKS

Applicants first thank the Examiner for the telephone interview with the undersigned on October 4, 2006 discussing the pending issues. Applicants note that the present response is in accordance with that discussion.

### **Amendments to the Specification**

The specification has been amended by inserting the identifying information as set forth in 37 C.F.R. § 1.809(d) as well as to correct a typographic error. No new matter is introduced.

### **Claim Status**

Claims 57, 59-62 and 71-72 are currently pending.

### **Claim Rejection – 35 U.S.C. §112, First Paragraph**

Claim 72 stands rejected under 35 U.S.C. §112, first paragraph, as allegedly failing to comply with the enablement requirement. Applicants respectfully traverse this rejection.

The Examiner states that a deposit of the *Bacillus thuringiensis* strain having the accession number NRRL B-21582 is required for enablement purposes and that if a deposit is made, then an affidavit or declaration by Applicant or a statement by an attorney of record would satisfy the deposit requirement made herein.

In response, Applicants confirm that the above *Bacillus thuringiensis* strain has been deposited in accordance with the Budapest Treaty and note that a copy of the deposit receipt was submitted to the Examiner along with Applicants' response dated November 4, 2005. In

addition, a copy of Declaration of Biological Culture Deposit by one of the inventors (i.e., William P. Donovan) was also submitted along with the deposit receipt.

In addition, Applicants have amended the Specification by inserting the identifying information set forth in 37 C.F.R. § 1.809(d) as requested by the Examiner. As such, the present enablement rejection should be withdrawn.

### **Conclusion**

With the allowance of claims 57, 59-62 and 71 as indicated by the Examiner in the present Office Action and the above amendments/remarks, the present application as claimed is in condition for allowance as indicated by the Examiner over the telephone interview on October 4, 2006. Should any additional issues remain, the Examiner is invited to contact the undersigned agent at (713) 787-1512.

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This document is filed timely. No fee is believed to be due; however, should any fees under 37 C.F.R. §§ 1.16 to 1.21 be deemed necessary for any reason relating to this document, the Commissioner is authorized to deduct said fees from Howrey LLP Deposit Account No. 08-3038/11792.0017.DVUS03.

Respectfully submitted,



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